

CCR's work. CCR staff members often serve as sources for journalist and media outlets on immigration, policing and detention policies.

The Immigration Justice Clinic of the Benjamin N. Cardozo School of Law ("the Clinic") was founded in 2008 to provide quality *pro bono* legal representation to indigent immigrants facing deportation. Under the supervision of experienced practitioners, law students in the Clinic represent individuals facing deportation and community-based organizations in public advocacy, media, and litigation projects. In just over one year of existence, the Clinic has already established itself as a leader in the dissemination of critically important information about immigration enforcement operations to the public. In February 2009, the Clinic issued a press release and released previously unavailable secret memoranda and data related to ICE home raid operations to the press, resulting in widespread national media coverage. In July 2009, the Clinic published the first public study of ICE's home raid operations, playing a critical role in informing the public of widespread constitutional violations and other abuses, again attracting significant national media attention.¹⁷

E. Fee Waiver

The Requesters are entitled to a waiver of all costs because the information sought "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requesters'] commercial interest." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). The Requesters have a proven track-record of compiling and disseminating information to the public about government functions and activities. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of federal immigration enforcement actions and policies. Access to this information is a prerequisite for members of the local community organizations to meaningfully evaluate immigration enforcement actions and their potential detrimental effects.

The public has an interest in knowing about the manner in which the federal government involves state and local entities in the enforcement of federal immigration law. Secure Communities is a new program of which the public has limited information. There is almost no data in the public domain about the implementation of Secure Communities or whether and how ICE adheres to its congressionally sanctioned objectives to target and prioritize "dangerous criminal aliens."¹⁸ The information that is available is vague and seems to indicate that ICE is not executing its enforcement priorities.¹⁹ The Records sought in this request will inform the

¹⁷ See Constitution On ICE: A Report on Immigration Home Raid Operations, Cardozo Immigration Justice Clinic, available at http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/IJC_ICE-Home-Raid-Report%20Updated.pdf

¹⁸ U.S. Congress, FY2010 Conference Summary: Homeland Security Appropriations, October 7, 2009 (providing funding to "improve and modernize efforts to identify aliens convicted of a crime, sentenced to imprisonment, and who may be deportable.")

¹⁹ See U.S. Immigration and Customs Enforcement, News Release, *Secretary Napolitano and ICE Assistant Secretary Morton Announce That the Secure Communities Initiative Identified More Than 110,000 Criminal Aliens*

public of the scope and effect of the Secure Communities program on community policing and safety, racial profiling, and Constitutional or due process violations in immigration detention. The public has a strong interest in knowing when and how an individual arrested by local police might be subject to federal immigration database checks and swept into the immigration detention and removal system. Moreover, local communities need the requested information about how Secure Communities functions in order to determine whether their interests will be served by the introduction of the program.

As stated above, the Requesters have no commercial interest in this matter. The Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

In the alternative, the Requesters seek all applicable reductions in fees pursuant to 6 C.F.R. § 5.11(d). The Requesters agree to pay for the first 100 pages of duplication. *See* 6 C.F.R. § 5.11(d). The Requesters agree to pay search, duplication, and review fees up to \$200.00. If the fees will amount to more than \$200.00, the Requesters request a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). If no fee waiver is granted and the fees exceed \$200.00, please contact the Requesters' undersigned counsel to obtain consent to incur additional fees.

F. Expedited Processing

Expedited processing of this request is required because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" is established when there exists an "urgency to inform the public concerning actual or alleged Federal Government activity," when the requester is a "person primarily engaged in disseminating information," 28 C.F.R. § 16.5(d)(1)(iv), and also when there exists "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence, 28 C.F.R. § 16.5(d)(1)(ii).

There is an urgent need to inform the public of the Secure Communities program. 28 C.F.R. § 16.5(d)(1)(iv). The Fiscal Year 2010 appropriations bill for DHS allocates \$200 billion to Secure Communities. To date, the program has been implemented in over 95 jurisdictions in eleven states. By 2013, ICE intends to operate the program in all 3,100 county and local jails across the country. In spite of this widespread fiscal and community impact, ICE has promulgated no regulations or agency guidelines regarding the operation of the program. ICE has not released the memorandums of agreement that it has entered into with local entities or disclosed precisely how Secure Communities will be implemented on a local level. As ICE continues to introduce Secure Communities in jurisdictions across the country, the public has an urgent need to understand the scope of the program.

in its First Year, Nov. 12, 2009 (citing that 110,000 "criminal aliens" have been identified, but indicating that some of these "criminal" aliens had only been *charged* but not *convicted* of crimes);

Given the vast implications of the program and the public uncertainty surrounding its implementation, Secure Communities is a "matter of widespread and exceptional media interest."²⁰ Correspondingly, the media has raised serious questions about the Secure Communities program related to the "government's integrity which affect public confidence," including concerns that Secure Communities will serve as a dragnet instead of a mechanism to target dangerous criminal individuals, and will hinder community policing and lead to racial profiling.²¹

G. Certification

The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. *See* 6 C.F.R. § 5.5(d)(3).

If you have any questions regarding the processing of this request, you may contact Bridget Kessler at (212) 790-0213 or Peter Markowitz at (212) 790-0340. Thank you for your kind consideration.

Please furnish all applicable Records to:

Bridget Kessler
Clinical Teaching Fellow
Cardozo School of Law
Immigration Justice Clinic
55 Fifth Avenue
New York, NY 10003

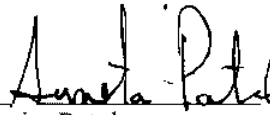
Sincerely,



Bridget Kessler
Clinical Teaching Fellow
Cardozo School of Law
Immigration Justice Clinic
55 Fifth Avenue
New York, NY 10003
Phone: (212) 790-0213

²⁰ Julia Preston New York Times, *U.S. Identifies 111,000 Immigrants With Criminal Records*, Nov. 13, 2009; New York Times, Editorial, *Wrong Paths to Immigration Reform*, Oct. 12, 2009; Jose M. Serrano, New York State senator, Letter to Editor, New York Times, *Threat to Immigrants*, Oct. 16, 2009; The Real Cost of Prisons Weblog, *Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens*, Jan. 19, 2009; N.C. Aizenman, Washington Post, *D.C. to help U.S. identify illegal immigrants in jail Federal program checks fingerprints of local crime suspects*, Nov. 13, 2009; *More Questions Than Answers About the Secure Communities Program*, Mar. 2009; *See* Michelle Waslin, Ph.D., *The Secure Communities Program: Unanswered Questions and Continuing Concerns*, 11, Nov. 2009;

²¹ *See* Michelle Waslin, Ph.D., *The Secure Communities Program: Unanswered Questions and Continuing Concerns*, 11, Nov. 2009 (noting the concern that Secure Communities raises questions about local police authorities' ability to build strong, trusting relationship with their communities).



Sunita Patel
Staff Attorney
Center for Constitutional Rights
666 Broadway, 6th Floor
New York, NY 10012
Phone: (212)614-6439

On behalf of the Requesters

Talking Points for Truman Scholars Association National Conference 2011
Immigration Reform: The Future of Federal and State Enforcement

July 23, 2011 – 11:00 am

Cooperation between DHS and State and Local Law Enforcement Agencies:

- Cooperation between DHS and State and Local Law Enforcement Agencies (SLEAs) enables DHS to leverage its limited resources efficiently and effectively.
- The most notable programs relying on SLEA cooperation are Secure Communities and 287(g).

Secure Communities:

- Secure Communities has facilitated ICE's ability to remove criminal aliens, in line with its civil enforcement priorities. Between October 2008 and the end of fiscal year 2010, the number of convicted criminals that ICE removed from the United States increased 71 percent, while the number of non-criminals removed dropped by 23 percent.
- These trends are due in part to the implementation and expansion of Secure Communities, which now accounts for 29 percent of all ICE criminal alien removals. Through April 30, 2011, cumulative removals of aliens identified through the program totaled 108,994, including criminal and non-criminal immigration violators—43,673 were convicted of felonies (levels 1 and 2), 33,487 were convicted of misdemeanors (level 3), and 31,834 were categorized as non-criminal immigration violators. In addition, 28 percent (9,044) were prior removals and less than 2 percent (402) were ICE fugitives.
 - Level 1 – Major drug offenses and/or violent offenses such as murder, manslaughter, rape, robbery, and kidnapping
 - Level 2 – Minor drug offenses and/or mainly property offenses such as burglary, larceny, fraud, and money laundering
 - Level 3 – Other offenses including prostitution, failure to pay child support, and public order crimes
- DHS is committed to ensuring that the civil rights and civil liberties of all individuals are protected, including during its enforcement operations. The DHS Office for Civil Rights and Civil Liberties (CRCL), in partnership with ICE, is developing a series of education and awareness materials for SLEAs. Additionally, CRCL and ICE are analyzing statistical data to identify any anomalies in Secure Communities that may be indicators of racial profiling or biased enforcement.
- Recently, ICE initiated a top-to-bottom review of Secure Communities and has taken several proactive steps including:

- Launching a new website for Secure Communities that includes frequently asked questions and links to training videos;
- Creating a new advisory committee that will evaluate the impact Secure Communities has on community policing;
- Issuing guidance regarding the exercise of prosecutorial discretion in cases involving witnesses and victims of crime;
- Releasing a new, easier to use and understand ICE detainer form that allows for added flexibility;
- Releasing new training materials for state and local law enforcement regarding civil rights issues related to the program; and
- Creating a new protocol for the investigation of complaints.

INA § 287(g):

- The 287(g) program allows SLEAs to enter into a partnership with ICE, under a joint Memorandum of Agreement (MOA), in order to receive delegated authority for immigration enforcement within their jurisdictions. The 287(g) program trains local officers to enforce immigration law, as authorized through section 287(g) of the Immigration and Nationality Act (INA), under the direction and supervision of ICE.
- Currently ICE has 287(g) agreements with 69 law enforcement agencies in 24 states. ICE has trained and certified more than 1,240 state and local officers to enforce the Nation's immigration laws.
- Under the 287(g) program, cross-designated state and local law enforcement officers identify aliens and process them for removal in accordance with 287(g) MOAs, which prioritize the arrest and detention of criminal aliens who pose the greatest threat to public safety or a danger to the community.
- Last year, ICE revised and standardized the 287(g) MOA to ensure more consistency and improve oversight of the 287(g) program.
 - The revised MOA supports ICE's overall immigration enforcement strategy by better aligning 287(g) operations with major ICE enforcement priorities. Specifically, the MOA requires that 287(g) officers prioritize for arrest and detention aliens who pose a threat to public safety or danger to the community.
 - The revised MOA defines the objectives of the 287(g) program and includes provisions that:

- Provide a clear procedure for individuals or agencies to file complaints regarding the alleged misuse of 287(g) authority;
- More clearly describe the nature and extent of ICE's supervision in overseeing the 287(g) program;
- Provide guidelines for information reporting and tracking; and
- Outline the immigration enforcement authorities granted by the agreement and describe the circumstances under which 287(g) authority is to be used by participating law enforcement agencies.
- Notably, pursuant to the revised MOA, local LEAs are expected to pursue to completion all criminal charges that caused the alien to be taken into custody and over which the LEA has jurisdiction. (This provision serves to deter pretextual arrests.)

State Immigration-Related Legislation:

- In the past year, a number of states, including Arizona, Utah, Indiana, Georgia, Alabama, and South Carolina have enacted legislation addressing immigration issues.
- DHS has worked and continues to work extensively with the Department of Justice in the U.S. Government's legal challenge to SB 1070 – the Arizona immigration law.
 - Arizona: On April 23, 2010, the Arizona Governor signed SB 1070, the Support our Law Enforcement and Safe Neighborhoods Act – an “enforcement only” bill requiring law enforcement officers to verify immigration status under certain circumstances; requiring that state and local law enforcement notify DHS of unlawfully present aliens convicted of crimes; creating various immigration-related state criminal offenses; expanding warrantless arrest authority; and requiring E-Verify enrollment for every business in the state.
 - On July 28, 2010, the federal district court issued a preliminary injunction stopping the enforcement of four provisions of SB 1070.
 - On April 11, 2011, the U.S. Court of Appeals for the Ninth Circuit upheld the preliminary injunction.
 - As that litigation is ongoing, I cannot comment further.
- DHS is aware of the other recent state enactments and continues to examine them.
 - Utah: On March 15, 2011, the Utah Governor signed four immigration reform bills into law.

1. H.B. 116, Utah Immigration Accountability and Enforcement Amendments – creating a guest worker program;
 2. H.B. 466, Migrant Workers and Related Commission Amendments – establishing a commission to investigate immigration issues and a migrant worker program in partnership with the Mexican state of Nuevo Leon;
 3. H.B. 469, Immigration Related Amendments – establishing a pilot program to allow Utah families to sponsor immigrants by taking financial and legal responsibility for them; and
 4. H.B. 497, Utah Illegal Immigration Enforcement Act – requiring law enforcement officers to verify immigration status under certain circumstances and creating state criminal offenses for transporting and harboring of “illegal aliens,” or conspiring to do so.
- Indiana: On May 10, 2011, the Indiana Governor signed SB 590, Illegal Immigration Matters – requiring verification of the immigration status and notification of DHS in certain circumstances; limiting access to state benefits for aliens not lawfully present; requiring use of E-Verify by state agencies, political subdivisions, contractors with public contracts for services with the state or a political subdivision, and certain business entities; creating various immigration-related state criminal offenses; and expanding warrantless arrest authority.
 - Georgia: On May 13, 2011, the Georgia Governor signed HB 87, the Illegal Immigration and Reform Act of 2011 – an “enforcement only” bill requiring that public contractors, subcontractors, and sub-subcontractors, and private employers with more than 10 employees enroll in E-Verify; creating various immigration-related state criminal offenses and increasing the penalties for others; and requiring verification of the immigration status of foreign nationals arrested and held in county or municipal jails.
 - Alabama: On June 9, 2011, the Alabama Governor signed HB56, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act – an “enforcement only” bill requiring E-Verify enrollment for every business in the state; creating various immigration-related state criminal offenses; requiring law enforcement officers to verify immigration status under certain circumstances; and limiting access to state benefits for aliens not lawfully present (including public postsecondary education).
 - South Carolina: On June 27, 2011, the Governor of South Carolina signed S20 – an “enforcement only” bill requiring verification of the immigration status and notification of DHS in certain circumstances; creating various immigration-related state criminal offenses; and prohibiting an unlawfully present alien from receiving public benefits.

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From:	Grossman, Seth </O=DHS ORG/OU=E2K3 ADMIN GROUP/CN=RECIPIENTS/CN=SETH.GROSSMAN>
To:	"Stransky, Steven </O=DHS ORG/OU=E2K3 ADMIN GROUP/CN=RECIPIENTS/CN=STEVEN.STRANSKY>"; "Baroukh, Nader </O=DHS ORG/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=NADER.BAROUKH>"
Subject:	FW: Reminder: OGC is Lead: S1BB - 03.09.11 S1 Testimony before Senate Judiciary Committee (Issue Paper #48 GTMO Detainees) - DUE 2/21/2011 at 5 p.m.
Date:	2011/02/17 18:00:09
Priority:	Normal
Type:	Note

Can we put together an issue paper on these questions from some of the previous issue papers we've sent up?

From: Yackshaw, Agnes **On Behalf Of** OGC Exec Sec
Sent: Thursday, February 17, 2011 5:45 PM
To: Grossman, Seth; Baroukh, Nader; Stransky, Steven
Cc: Mercaldo, Carlo; OGC ES Immigration
Subject: Reminder: OGC is Lead: S1BB - 03.09.11 S1 Testimony before Senate Judiciary Committee (Issue Paper #48 GTMO Detainees) - DUE 2/21/2011 at 5 p.m.

Hello, Seth, Nader and Steve:

This is just a reminder that you are the lead on this issue paper. ESEC will need final, clean issue paper by Monday, 2/22/2011, at 5 p.m.

However, before this final date/time, OGC needs to provide this issue paper to appropriate Component POC's for their comment/clearance:

I&A Exec Sec is POC for I&A.

U/S Beers Office POC is Pat Barry

CRCL POC's are Michael Blinde and CRCL ExecSec

Please make sure you have this drafted a week before due date (we request 2/21/2011 at 5 p.m.) so OGC Exec Sec has time to send the issue paper out for required review.

Thanks very much, Agnes

Agnes Yackshaw

Office of the General Counsel

U.S. Department of Homeland Security

(b)(6)

A large rectangular black box redacting the content of the email body.

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From: Yackshaw, Agnes **On Behalf Of** OGC Exec Sec

Sent: Friday, January 21, 2011 4:01 PM

To: Stransky, Steven; Baroukh, Nader; Grossman, Seth

Subject: REVISED: OGC is Lead: S1BB - 03.09.11 - Issue Paper #48. GTMO Detainees: S1
Testimony before Senate Judiciary Committee - DUE 2/28/2011 at 5 p.m.

Hello, Seth, Nader and Steve:

ESEC revised this issue paper by adding another required coordinator. Please note update in **RED** below.

Non Responsive

We'll need your issue paper by Monday, 2/28/2011, at 5 p.m. We've made a note to send you a reminder the week before in case you are not able to provide this paper before then. As there are many issue papers to provide for S1, if we are able to provide these sooner than the due date rather than later, that would be ideal.

Thanks very much, Agnes

Agnes Yackshaw

Office of the General Counsel

U.S. Department of Homeland Security

(b)(6)

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From: Yackshaw, Agnes **On Behalf Of** OGC Exec Sec
Sent: Friday, January 21, 2011 1:52 PM
To: Stransky, Steven; Baroukh, Nader; Grossman, Seth
Subject: OGC is Lead: S1BB - 03.09.11 - Issue Paper #48. GTMO Detainees: S1 Testimony before Senate Judiciary Committee - DUE 2/28/2011 at 5 p.m.

Hello, Nader, Seth and Steve:

Please note you are lead on this issue paper:

Non Responsive

We'll need your issue paper by Monday, 2/28/2011, at 5 p.m. We've made a note to send you a reminder the week before in case you are not able to provide this paper before then. As there are many issue papers to provide for S1, if we are able to provide these sooner than the due date rather than later, that would be ideal.

Thanks very much, Agnes

Agnes Yackshaw

Office of the General Counsel

U.S. Department of Homeland Security

(b)(6)

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From: Homer, Rachel

Sent: Thursday, January 13, 2011 4:11 PM

To: Duggan, Alaina; Cohen, John (CTR); Campbell, Sandra L; Faber, Birch; Plcy Exec Sec; Duvall, John; OGC Exec Sec; Yackshaw, Agnes; Andreacchio, Miranda; Andrews, Stephanie; I&A Exec Sec; Bertucci, Nicole M; MGMTExecSec; Smith, Stephanie; CBP Tasking; TEZAK, JOSEPH E; ICE Exec Sec; Barry, Patrick; Carroll, Heather; Dorris, Earl; Mahn, Amy V; NPPDExecSec; NPPDtasking; Weller, Angela; CRCL Exec Sec; PRIV Exec Sec; Privacy Office; Collier, Erin; Done, Ryan K; Hosmer, Mark; McCormick, Ryan; Pringle, Veronica; StPierre, Tracey; TSAExecSec; Cuomo, Jacob; MILExecSec; Nadler, Kristi; Heinz, Todd; Joves, Alexander; King, Ria; Kruger, Mary; Lee, Charmaine; Newingham, Marty; OPS Exec Sec; Saitta, Christopher; Wein, Matthew; IGAExecSec; Robinson, Amanda; Allan, Thomas CDR; Callahan, David CAPT; Dixon, Murad YNC; USCG Exec Sec; Carter, Constance L; Contaldi, Kerry; Drake, Johnetta; Kielsmeier, Lauren; Mattice, Michael; McCament, James W; McWhirter, Robert C; Roles, Rebecca J; USCIS Exec Sec; Williams, Alicia; Edge, Elizabeth; FEMAExecSec; Glen, Thomas; Loyd, Paul

Cc: Baronof, Kim; Alfred, Kimonia; OLA Exec Sec; Winkler, Jeremy; BriefingStaffA

Subject: S1BB - 03.09.11 - Issue Papers: S1 Testimony before Senate Judiciary Committee - (Due: 02.28.11, 1700)

All:

S1 will testify before the Senate Judiciary Committee on March 9, 2011. **Below is a list of required issue papers** to prepare her for this testimony. These issue papers should be **no more than two pages, but preferably one**. This will be a general oversight hearing but will primarily focus on immigration and border security issues. Please note that all issue papers must be unclassified as this is a public hearing.

Please also note: many of the below issue papers are similar to past IPs. If appropriate, please feel free to update a relevant past issue paper, however, please ensure that any updated IPs are substantially edited to reflect the specific issues described below– this is a new Senate session, and the nature & focus of the questions asked of S1 will be different than past hearings.

Due Date: Monday, 02.28.11, at 1700.

Please submit final Issue Papers to the following (all CC'd):

[BriefingStaffA](#) (b)(6)

[OLAexecsec](#) (b)(6)

[kim.Baronof](#) (b)(6)

[Jeremy.Winkler](#) (b)(6)

[Kimonias.Alfred](#) (b)(6)

Note - Lead Components: Please be sure to loop in OGC early on in the coordination process. If OGC receives all 50 issue papers on the due date, they will not be able to clear on time. Lead components are ultimately responsible for timely submission of Issue Papers to ESEC, so please be sure to build in enough time for coordination.

1. • • 1. **SBI net:** Provide status of SBI net, the Secretary's review of the program and future plans for addressing the technology component at the border.

Lead Component: CBP, Required Coordinators: PLCY and OGC

2. • • 2. **Border Fence:** Provide update on the latest border fence construction statistics. Include whether there are plans to add reinforced fencing in certain areas along the border.

Lead Component: CBP, Required Coordinators: PLCY and OGC

3. • • 3. **Border Staffing:** Provide update on Southern and Northern border staffing numbers? Please include deployment plans for the additional 1,008 Border Patrol agents.

Lead Component: CBP, Required Coordinators: PLCY and OGC

4. • • 4. **National Guard Augmentation:** Provide update on National Guard deployment to the Southwest border. Explain why the Department believes the current National Guard numbers are sufficient. Include timeline/future plans for the deployment.

Lead Component: MIL, Required Coordinators: CBP, PLCY and OGC

5. • • 5. **Interior Checkpoints:** Describe the need to maintain interior checkpoints on the Northern and Southern borders. Describe the Department's authorities related to these checkpoints.

Lead Component: CBP, Required Coordinators: PLCY and OGC

6. • • 6. **APIS AQQ Modernization:** Provide update on APIS AQQ modernization and implementation.

Lead Component: CBP, Required Coordinators: PLCY and OGC

7. • • 7. **Border Patrol Corruption:** Describe CBP efforts to address Border Patrol corruption. Please include progress on periodic reinvestigations and polygraph testing.

Lead Component: CBP, Required Coordinators: PLCY and OGC

8. • • 8. **Southwest Border Initiative:** Provide update on the Southwest Border Initiative announced by the Secretary in March 2009 and its impact on the flow of drug, weapons and bulk cash smuggling. Note this should be a joint CBP and ICE product and provide the Secretary with an update on the progress made to date, including stats for apprehensions and seizures.

Lead Component: CBP, Required Coordinators: ICE, PLCY and OGC

9. • • 9. **ACTT:** Provide update on the Alliance to Combat Transnational Threat (ACTT).

Lead Component: CBP, Required Coordinators: ICE, PLCY, OGC

10. • • 10. **Border Violence:** Provide assessment of current state of violence in Mexico and along the Southwest border.

Lead Component: I&A, Required Coordinators: OPS, PLCY, CBP, ICE and OGC

11. • • 11. **Morses Line Port of Entry:** Provide update on the closure process for the Morses Line Port of Entry in Vermont. Include efforts to work with the community and VT delegation.

Lead Component: CBP, Required Coordinators: IGA, PLCY and OGC

12. • • 12. **Border Security and Public Lands:** Provide update on relationship between Department of Interior/USFS and CBP regarding access to public lands. Address recent GAO report critical of the coordination between CBP and DOI/USFS.

Lead Component: CBP, Required Coordinators: PLCY and OGC

13. • • 13. **U.S. Canada VISION/Northern Border Strategy:** Provide update on the U.S. Canada VISION. What does this agreement accomplish? What is DHS' role in the development of the VISION? How does the VISION differ from the Northern Border Strategy? When will the Northern Border Strategy be released?

Lead Component: PLCY, Required Coordinators: CBP and OGC

14. • • 14. **Western Hemisphere Travel Initiative:** Provide an update on WHTI. Address the pending GAO report, which indicates DHS has not fully implemented the documentary requirements outlined by WHTI, thereby failing to close the security vulnerability the program was meant to address.

Lead Component: CBP, Required Coordinators: TSA, PLCY and OGC.

15. • • 15. **Operation Streamline:** Provide update on Operation Streamline. Does DHS plan to expand the program?

Lead Component: ICE, Required Coordinators: CBP, PLCY and OGC

16. • • 16. **ESTA:** Provide status update on ESTA, including compliance rates.

Lead Component: CBP, Required Coordinators: TSA, PLCY and OGC

17. • • 17. **Trusted Traveler Program (Global Entry):** Provide update on the Department's International Trusted Traveler Program (Global Entry).

Lead Component: CBP, Required Coordinators: TSA, I&A, PLCY and OGC

18. • • 18. **Worksite Enforcement:** Provide update on the Department's worksite enforcement efforts to hold employers accountable for hiring illegal immigrants. Please include explanation of new worksite strategy focusing on I-9 audits and debarments versus operations/raids.

Lead Component: ICE, Required Coordinators: CRCL, PRIV, PLCY and OGC

19. • • 19. **I-9 Audits:** Address concerns with impact of I-9 audits. What criteria does DHS use to determine which companies to audit?

Lead Component: ICE, Required Coordinators: PLCY and OGC

20. • • 20. **Secure Communities:** Provide update on Secure Communities and its continued expansion.

Lead Component: ICE, Required Coordinators: CRCL, PRIV, PLCY and OGC

21. • • 21. **Minor Children/Worksite Enforcement:** Please explain Department guidelines in regards to minor children who may be affected by worksite enforcement actions.

Lead Component: ICE, Required Coordinators: CRCL, PRIV, PLCY and OGC

22. • • 22. **287(g):** Provide the Department's strategic plan for 287(g) and the impact of the updated guidelines on state and local law enforcement. Please include whether the Department plans to phase out the 287(g) task force model and whether 287(g) is being phased out all together and replaced by Secure Communities.

Lead Component: ICE, Required Coordinators: CRCL, PRIV, PLCY and OGC

23. • • 23. **Detention Reform:** Provide update on the Department's detention reform efforts. Please include updates on bed space, alternatives to detention, PBNDS standards, consolidation of facilities, limiting transport, and any other pertinent information.

Lead Component: ICE, Required Coordinators: CRCL, PLCY and OGC

24. • • 24. **Visa Security Program:** Describe how the Visa Security Program currently works and DHS' plans/challenges for its expansion. Include explanation of why it's vital DHS has a physical presence at key overseas locations.

Lead Component: ICE, Required Coordinators: PLCY and OGC

25. • • 25. **Stored Value Cards (SVCs):** Provide an overview of the Department's efforts to ensure that Stored Value Cards are not being used by drug cartels and other criminal organizations to move money illegally out of the United States.

Lead Component: ICE, Required Coordinators: PLCY and OGC

26. • • 26. **Criminal Alien Program:** Provide background and update on the Department's Criminal Alien Program.

Lead Component: ICE, Required Coordinators: PLCY and OGC

27. • • 27. **Fugitive Operations Program:** Describe the objectives of the fugitive operations program and address concerns regarding non-fugitive aliens apprehended.

Lead Component: ICE, Required Coordinators: CRCL, PRIV, PLCY and OGC

28. • • 28. **Parole Policies for Asylum Seekers:** Describe DHS' way forward on parole policies for asylum seekers and the outcome of the Department's review.

Lead Component: USCIS, Required Coordinators: CRCL, PRIV, ICE, PLCY and OGC

29. • • 29. **Biometric Air and Land Exit:** Provide update on whether DHS intends to meet the statutory biometric air exit requirement. Does the Department intend to pursue a biometric air exit solution? Describe the Department's views on pursuing a comprehensive biometric exit program for land ports of entry.

Lead Component: NPPD (US-VISIT), Required Coordinators: ICE, TSA, CBP, CRCL, PRIV, PLCY and OGC

30. • • 30. **Visa Overstays:** Describe steps DHS is taking to establish reliable data on overstays, including those visitors who enter the United States under the Visa Waiver Program. Provide stats showing progress of DHS tracking visa overstays. Explain why DHS has not published overstay rates since 1992, despite being statutorily required to do so since 1987.

Lead Component: NPPD (US-VISIT), Required Coordinators: ICE, PRIV, CRCL, PLCY, OGC.

31. • • 31. **Visa Waiver Program/Poland:** Describe steps DHS is taking to admit Poland into the Visa Waiver Program.

Lead Component: PLCY, Required Coordinators: OGC

32. • • 32. **Decoupling of VWP and Biometric Exit Requirement:** Will DHS seek to "decouple" the visa waiver program from the 9/11 Act requirement to establish a biometric exit process for air travelers?

Lead Component: PLCY, Required Coordinators: OGC

33. • • 33. **REAL ID:** Please provide an update on the REAL ID program. Include the following elements: Will REAL ID be fully implemented as statutorily required by May 2011? If not what steps is DHS taking to meet the REAL ID requirements? What steps has DHS taken to prepare to handle the additional workload at TSA checkpoints and in other locations where a federally recognized identity document is required for bearers of state-issued documents that are not REAL ID compliant? What other documents will residents of non-compliant States be able to use for Federal purposes, including boarding commercial flights? What percentage of the US population holds alternative, acceptable documents? How much grant money has been provided to States to prepare for REAL ID? How have the States utilized these funds? What States are likely to be fully compliant by May 2011? Please provide snapshots for the following states: VT, WI, CA, NY, IL, MD, RI, MN, MN, AL, UT, IA, AZ, SC, TX and OK.

Lead Component: PLCY, Required Coordinators: FEMA (grants), IGA, TSA, CBP, CRCL, PRIV, OGC

34. • • 34. **Merida Initiative:** Provide update on DHS' contributions to the Merida Initiative. Include DHS' future plans in regards to assistance to Mexico, Central America and the Caribbean.

Lead Component: PLCY, Required Coordinators: CBP, OGC

35. • • 35. **USCIS Business Transformation:** Describe status of USCIS' business transformation efforts.

Lead Component: USCIS, Required Coordinators: PLCY and OGC

36. • • 36. **Material Support Exemptions:** Provide status of material support exemptions.

Lead Component: PLCY, Required Coordinators: USCIS and OGC

37. • • 37. **E-Verify:** Provide status of E-Verify and DHS' plans for further expansion. Does DHS support making E-Verify permanent and mandatory? What incentives exist to encourage voluntary participation? Are all recipients of Federal

stimulus dollars using E-Verify? Please include updated statistics on accuracy rate of the system.

Lead Component: USCIS, Required Coordinators: PLCY and OGC

38. • • 38. **USCIS Anti-Fraud Efforts:** Provide update on USCIS measures put in place to address issues of fraud and overall efforts to prioritize the agency's anti-fraud and national security missions. Please include update on efforts to combat fraud in the H-1B and L-1 visa programs. Also include status of FDNS report on L-1 visa abuse.

Lead Component: USCIS, Required Coordinators: ICE, CRCL, PRIV, PLCY and OGC

39. • • 39. **EB-5 Program:** Provide any updates or changes to the EB-5 Program.

Lead Component: USCIS, Required Coordinators: PLCY and OGC

40. • • 40. **Project Seahawk:** Provide update on funding for Project Seahawk in Charleston, SC.

Lead Component: USCG, Required Coordinators: PLCY and OGC

41. • • 41. **Grant Funding:** Describe how DHS avoids duplicative spending of grant dollars (i.e. HHS and DHS giving dollars to the same grantees for the same purposes).

Lead Component: FEMA, Required Coordinators: MGMT, PLCY and OGC

42. • • 42. **Advance Imaging Technology (AIT):** Provide overview of Advance Imaging Technology. Please address concerns with health affects of AIT. Also address recently introduced legislation (S. 4037) that would impose a criminal penalty for unauthorized recording or distribution of AIT images.

Lead Component: TSA, Required Coordinators: CRCL, PRIV, PLCY and OGC.

43. • • 43. **Air Cargo Security/Yemen:** Provide update on recent efforts to improve air cargo security.

Lead Component: CBP, Required Coordinators: TSA, I&A, PLCY and OGC

44. • • 44. **Background Checks/Foreign Flight Students:** Describe how DHS and FAA work together to conduct thorough background checks of foreign flight students.

Lead Component: TSA, Required Coordinators: I&A, CRCL, PRIV, PLCY and OGC

45. • • 45. **TSA Pat-Down Procedures:** Provide update on new TSA pat-down procedures and protocol regarding special procedures for victims of sexual assault.

Lead Component: TSA, Required Coordinators: CRCL, PRIV, PLCY and OGC

46. • • 46. **Secure Flight:** Provide update on the Secure Flight Program. Please include progress made to prevent name mismatches which result in secondary screening.

Lead Component: TSA, Required Coordinators: CRCL, PRIV, PLCY and OGC

47. • • 47. **Cybersecurity:** Explain DHS role regarding cybersecurity and combating cyber crime in light of the President appointing a cybersecurity lead inside the White House. How will DHS work with DOD on cybersecurity issues?

Lead Component: NPPD, Required Coordinators: MIL, I&A, PLCY and OGC

48. • • 48. **GTMO Detainees:** To what extent has DHS been involved in reviewing the potential to close the detention facility at Guantanamo, Cuba? To what extent has DHS been involved in the decisions on the release/repatriation/resettlement of detainees either to their native countries or to countries willing to accept them? Does closure of GTMO and the resettlement of detainees pose a security risk to the United States? Will bringing detainees to the U.S. for trial in civilian courts increase the risk of terrorism? What steps has DHS taken to address these issues?

Lead Component: OGC, Required Coordinators: PLCY, I&A, U/S Beers Office
(POC: Pat Barry)

49. • • 49. **Revising Citizenship Rules for Terror Suspects:** Provide DHS views on revising U.S. citizenship law to make it easier to revoke the citizenship of naturalized citizens accused of terrorism.

Lead Component: OGC, Required Coordinators: CRCL, PRIV, PLCY, USCIS

50. • • 50. **Homegrown Terrorism:** Provide update on DHS efforts and work with the interagency to combat homegrown terrorism.

Lead Component: PLCY, Required Coordinators: John Cohen, CRCL, PRIV, I&A, IGA and OGC

As always, please don't hesitate to reach out with any questions.

Thank you,

Rachel

Rachel Homer

Secretary's Briefing Book

Office of the Secretary

Department of Homeland Security

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Recipient:	"Stransky, Steven </O=DHS ORG/OU=E2K3 ADMIN GROUP/CN=RECIPIENTS/CN=STEVEN.STRANSKY>"; "Baroukh, Nader </O=DHS ORG/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=NADER.BAROUKH>"
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AILA National Office
Suite 300
1331 G Street, NW
Washington, DC 20005

Tel: 202.507.7600
Fax: 202.783.7853

www.aila.org



August 8, 2011

The Honorable John Morton
Director, U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

Dear Director Morton:

The American Immigration Council (AIC) and the American Immigration Lawyers Association (AILA) have received widespread reports of restrictions on access to counsel imposed upon noncitizens detained in ICE custody and during required interactions with ICE officers. Both organizations believe the reported restrictions violate federal laws meant to protect noncitizens' access to meaningful legal representation. We are writing today to highlight our concerns in the hope of beginning a dialogue about these issues.

AIC and AILA recently conducted a nationwide survey to gather information about access to counsel and attorney-client interactions in proceedings before USCIS, CBP, and ICE. We then collaborated with Penn State Law School's Center for Immigrants' Rights to analyze more than 250 survey responses submitted by immigration attorneys practicing throughout the country. The data provided in these responses and in additional outreach efforts depict a system where restrictions on legal representation are recurrent and widespread, and where ICE officers commonly treat attorneys as adversaries. Several examples of limitations on representation are attached as an appendix to this letter.

Among attorneys who completed our survey, a substantial number reported being prohibited from accompanying their clients during interviews with ICE officers or from meaningfully participating in such interviews. These restrictions were reported across a range of interactions, including custodial interviews, interviews relating to orders of supervision, post-arrest interrogation, NSEERS summons, stays of removal, deferred action requests, and alternative to detention programs. For example, an ICE officer in Newark not only prohibited an attorney from accompanying his client during an interview, but threatened to deny bond if the attorney continued to protest. ICE officers in Las Vegas reportedly laughed when an attorney asked to see a client arrested earlier in the day, instructing a receptionist to tell him to "keep waiting." And an attorney from Massachusetts reported that the only time she was granted access to a detained client during discussions with ICE regarding terms of release was when an attorney from the Justice Department's Office of Immigration Litigation intervened with ICE on her behalf.

As related to our organizations, accounts of such restrictions appear to violate both statutory and regulatory guarantees affording noncitizens the right to counsel during interactions with ICE employees. *See, e.g.*, 5 U.S.C. § 555(b) (“A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel”); 8 C.F.R. § 292.5(b) (“Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative.”); 60 Fed. Reg. 6647, 6648 (Feb. 3, 1995) (stating that attorneys may engage in “full representation” during examinations before immigration officers).¹

Many attorneys who completed our survey also reported restrictions on their ability to communicate with or otherwise access noncitizens held in ICE detention. At the Pinal County Jail in Arizona, an attorney reported that most client consultations now take place via videoconference, a practice raising issues of attorney-client confidentiality and making it difficult for detainees to sign or meaningfully review documents. Several attorneys reported that ICE refused to provide any information regarding their detained clients unless they had an original signed Form G-28 on file. However, according to an attorney from Michigan, many jails holding ICE detainees refuse to accept overnight deliveries, thereby extending the time needed to submit Form G-28.

Obstacles facing attorneys representing or seeking to represent noncitizens in ICE custody raise particular concerns given the inherent difficulties many detainees face in securing legal representation in the first place.² Federal law guarantees noncitizens the privilege of having legal representation in removal proceedings. 8 U.S.C. § 1229a(b)(4)(A) (“[T]he alien shall have the privilege of being represented ... by counsel of the alien’s choosing who is authorized to practice in such proceedings”); 8 C.F.R. § 1240.3 (“The respondent may be represented at the hearing by an attorney or other representative qualified under 8 CFR part 1292.”). To ensure the meaningful enjoyment of this right, the ability to consult with counsel cannot be limited to the removal hearing itself. Many forms of immigration relief require extensive consultation between attorneys and clients, and the outcome of a removal hearing may hinge on the ability of an attorney to personally consult with a client held in detention. It is therefore crucial that noncitizens in ICE custody not face undue obstacles in securing legal representation or conferring with counsel.

Finally, numerous attorneys reported that ICE officers had attempted to dissuade their clients from retaining an attorney or said they possessed no right to counsel in the first place. In one

¹ *Also see* Minutes of AILA/USCIS Field Operations Liaison Meeting (May 20, 2011), AILA InfoNet Doc. No. 11070861 (posted July 8, 2011) (confirming that “[a]ttorneys and/or accredited representatives should, barring safety or security concerns, be permitted to sit next to their clients during interviews.”).

² *See, e.g.*, National Immigration Law Center, *et al.*, “A Broken System: Confidential Reports Reveal Failures in U.S. Immigrant Detention Centers” (July 2009) (“[H]iring counsel is a luxury that the majority of detained immigrants cannot afford”); National Immigrant Justice Center, “Isolated in Detention: Limited Access to Legal Counsel in Immigration Detention Facilities Jeopardizes a Fair Day in Court” (September 2010) (calculating that in 2009 “80 percent of detainees were held in facilities which were severely underserved by legal aid organizations”); Human Rights Watch, “A Costly Move: Far and Frequent Transfers Impede Hearings for Immigrant Detainees in the United States” (June 2011) (stating that detainee transfers “can render attorney-client relationships unworkable” and “separate immigrants from the evidence they need to present in court.”).

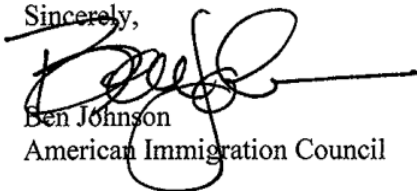
telling example, an attorney in Virginia said an ICE officer told a woman who later retained her services that there was “no point” in hiring a lawyer. Similarly, an attorney from Des Moines reported that ICE officers have told his clients that hiring an attorney is unnecessary because they will only “steal” from them. While our organizations share ICE’s concern with “notarios” and other unscrupulous individuals who take advantage of vulnerable noncitizens, the mere existence of such fraud cannot justify the demonization of the entire legal profession.

In addition to the troubling accounts received from our members, our organizations are further concerned by the difficulty we have experienced in ascertaining ICE’s policy regarding access to counsel. Prior to the creation of the Department of Homeland Security, the Immigration and Naturalization Service issued an “Examinations Handbook” with extensive guidance addressing when noncitizens were entitled to be notified of their right to counsel,³ when counsel could be present during interrogations before Service officers,⁴ and when counsel should be notified prior to initiating contact with their clients.⁵ By contrast, the Detention and Removal Operations Policy and Procedure Manual (DROPPM) contains scant guidance regarding noncitizens’ right to counsel.⁶ Moreover, while the Performance Based National Detention Standards (PBNDS) set forth general guidelines regarding access to counsel, they give individual detention centers great leeway in establishing specific policies in detainee handbooks.

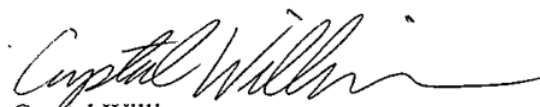
Access to counsel not only aids noncitizens in navigating our often complex immigration system, but also improves the quality and efficiency of immigration proceedings. By opening a dialogue with ICE, we hope to better understand why ICE continues to restrict noncitizens’ access to counsel, and to provide input on new guidance that better reflects existing statutory and regulatory protections. This dialogue will also inform a White Paper on access to counsel we are drafting with Penn State Law’s Center for Immigrants’ Rights. Our efforts are premised on the idea that noncitizens and ICE officers have a mutual stake in a functional, transparent, and just legal system of which access to counsel is an essential part.

Please do not hesitate to contact us if you have any questions about our request. We look forward to future opportunities to discuss these concerns with you.

Sincerely,


Ben Johnson
American Immigration Council

bjohnson@immcouncil.org


Crystal Williams
American Immigration
Lawyers Association

cwilliams@aila.org

³ INS Examinations Handbook (1988) at I-75 (“An alien arrested without warrant is entitled to representation and shall be similarly advised.”).

⁴ *Id.* at I-76 (“If the person desires to consult counsel or have counsel present, interrogation must be suspended until such desires have been satisfied.”).

⁵ *Id.* at I-79 (“The general policy is that notice should be given to the attorney of an interview of the client.”).

⁶ By comparison, both the USCIS Adjudicators Field Manual and the CBP Inspectors Field Manual contain guidance regarding the rights of attorneys during agency interviews. *See, e.g.*, AFM chapters 12.1, 15.2, 15.4, 15.8; IFM chapters 2.9, 17.1(e), 44.8(d), 44.9.

cc:

Noah Kroloff, Chief of Staff, DHS

John Sandweg, Counselor to the Secretary and Deputy Secretary, DHS

Esther Olavarria, Counsel to the Secretary, DHS

Ivan Fong, General Counsel, DHS

Seth Grossman, Chief of Staff, Office of the General Counsel, DHS

Suzanne Barr, Chief of Staff, ICE

Beth Gibson, Assistant Deputy Director, ICE

Peter Vincent, Principal Legal Advisor, ICE

Riah Ramlogan, Deputy Principal Legal Advisor, ICE

**APPENDIX—ATTORNEY ANECDOTES SUBMITTED
IN RESPONSE TO AIC/AILA COUNSEL SURVEY**

ATTORNEY #1

The following is based on a phone conversation with an attorney in Des Moines, Iowa:

Officers in the ERO ICE Office in Des Moines, Iowa, generally bar access to counsel during ICE interviews. My clients have appeared at this office for custodial interviews, interviews related to orders of supervision and for general questioning. When my clients have been brought to this office immediately following an arrest, I have not been able to call them and they have not been able to call me. In almost all cases, I have not been allowed to enter the room where the ICE officer was interviewing my client. In one instance when I insisted on being present during questioning of my client, I was told that I could observe the officer while he questioned my client but I could not speak. I was told that if I opened my mouth, I would be “kicked out.”

I think it is vital that my clients understand their rights, and when I am not able to speak with them before or during questioning, I believe they are at a serious disadvantage. For example, they may not understand the consequences of decisions ICE officers encourage them to make. ICE officers have encouraged my clients to sign stipulated removal orders and have described these orders to my clients as “voluntary departure orders.” They have said to my clients, in essence, “sign this and in two days, you’ll be drinking a beer in Mexico,” as though there are no legal consequences to the decision to sign the order.

In addition, ICE officers treat me and my clients in an unnecessarily threatening manner. Recently, an officer told me that my client had to appear for a supervision interview between 9 and 10 a.m. on a particular day. The officer explicitly stated that he would “arrest” my client if the client appeared even shortly after 10 a.m. In another recent example, an ICE officer insisted that my client bring her three young children to an order of supervision interview so the officer also could interview the children. I was not permitted to attend this interview. My clients have also been told by ICE officers that a lawyer is unnecessary, that lawyers steal from you, and that they don’t know what they’re doing.

ATTORNEY #2

The following is based on a phone conversation with an attorney in Phoenix, Arizona:

I frequently defend immigrants facing deportation and have experienced numerous problems at two heavily used detention facilities. Until a few years ago, attorneys could meet face-to-face with clients or prospective clients being held in detention at the Pinal County Jail. Now, most consultations occur via videoconference, which makes it impossible for detainees to sign or meaningfully review any documents. When face-to-face meetings can be arranged, attorneys and clients are still separated by a glass wall containing an extremely narrow slot through which papers can be passed. As a result, detainees can only receive a handful of documents at a time,

which makes it difficult for them to review large submissions. Meanwhile, at the Eloy Detention Center, CCA often prevents clients from meeting with attorneys who have travelled to the facility. Sometimes, the jail will go on "lockdown" for no apparent reason, or the client has meal period. On numerous occasions, I've waited most of the day for a 15-minute client meeting, and have even had to return to Phoenix without meeting with my client at all. When I've complained to ICE, I'm told there is nothing they can do because visitation policies are set by CCA. The obstacles are so frustrating that a lot of good attorneys don't do detention work any more because it's simply not feasible.

ATTORNEY #3

The following is based on an email and follow-up phone conversation with an attorney near Philadelphia, Pennsylvania:

Earlier this year, I represented numerous students from Tri-Valley University who were instructed to report for interviews at various ICE offices on the East Coast. During interviews that took place in Newark, New Jersey, I was repeatedly prohibited from being present while my clients were questioned. One officer, Special Agent Ziad Jiries, told me I could see my client when he was "good and ready," and threatened to deny bond if I persisted in my efforts. In my absence, he and Special Agent Steven Quattrocchi extensively questioned my client about his student status and activities at Tri-Valley University. By the time the interview had concluded, they had already issued an NTA. According to my client, they joked about my efforts to be present during the interrogation.

The restrictive policy at the Newark office stands in contrast with the policy in place at the ICE offices in Philadelphia and Fairfax, Virginia, where I have been permitted to accompany my clients during questioning. By being present during the interviews, I not only gave my clients peace of mind, but made the process more efficient for the ICE officers themselves by encouraging the students to be more forthcoming.

ATTORNEY #4

The following is an excerpt from an email submitted by an attorney in Las Vegas, Nevada:

A client with no criminal record was picked up by ICE officers when his I-751 was denied. My G-28 was already in the client's file as his attorney of record. The morning of his arrest, I called ICE's Las Vegas Field Office and asked to speak with my client. I was told I could not speak with him because he was still in processing. At 1 p.m., I went to the ERO office, presented a copy of my signed G-28, and asked again to speak with my client. I was told I could not speak with him because he was still in processing. I waited over one hour but never got the chance to speak with my client. I was told later by another alien detained at the same office that each time the window clerk came to the back office saying that my client's attorney was out front asking to speak with him, the officers laughed and said to tell the attorney (me) to keep waiting. The other detainee said they had been done with my client for a long time and he was just sitting in the back detention room with the other detainees. This other detainee saw and heard all of this

because she was a female and was handcuffed to a desk because she could not be held in the detention room with the male detainees.

ATTORNEY #5

The following is an excerpt from an email submitted by an attorney in Los Angeles, California:

A client was recently detained and subject to imminent deportation following the reinstatement of a prior removal order. I faxed ICE a Form G-28 to the detention center in Mira Loma, CA, which is about two hours from my office, but was told they would not speak with me unless they had the client's original signature on the G-28. I told ICE I could not get to the detention center to have the client sign the form, but the ICE officer [on the case] refused to speak with me. Eventually, I persuaded the officer's superiors to take the faxed form to the client to obtain an original signature. But this accommodation, which should have been provided as a matter of course, was only obtained after many phone calls and hours of frustration. I was told that the policy of Mira Loma detention center was not to accept Form G-28 unless it had an original signature. While ICE made an exception in my case, I am unsure if that extends to other similar situations.

ATTORNEY #6

The following is a summary of a phone conversation with an attorney in Detroit, Michigan:

I have worked as an immigration attorney since 1990 and have represented more than 200 clients in matters involving ICE. Over the years, the ICE office in Detroit has engaged in numerous practices that interfere with the attorney-client relationship. To begin with, ICE officers refuse to provide even basic information—such as an A-number or bond amount—to attorneys unless they have a signed G-28 on file. I am told the justification for this refusal is a “policy memo” from Washington, DC, that relies on the Privacy Act. On numerous occasions, however, ICE has provided the same information I was initially refused to the wife or girlfriend of a detainee calling from a private cell phone while inside my office.

The ramifications of this “policy” are compounded by the length of time needed to secure a signed G-28. Many local jails holding detainees on ICE's behalf refuse to accept overnight deliveries, requiring all letters to be sent by regular mail. In addition, many jails refuse to fax or otherwise transmit signed copies of Form G-28 to the relevant ICE office, requiring detainees to mail signed forms back to their attorneys, who then must express or deliver them in person to ICE. On one occasion, I had to send a Form G-28 to three different facilities because my client kept being transferred before the form arrived.

Finally, ICE officers are generally unaware that clients in ICE detention do, in fact, have a right to legal representation. ICE officers have told numerous clients they have “no right” to a lawyer or will be denied bond if they seek to obtain one.

ATTORNEY #7

The following is an excerpt from an email submitted by an attorney in Boston, Massachusetts:

I have had clients released on orders of supervision from the York, PA and Hampton Roads, VA facilities, as well as from various facilities in Massachusetts. I am never given access to my clients at the detention centers prior to their release although they are often required to agree to restrictive release provisions. Having a G-28 on file means that my client is a represented party. Even when I am in litigation regarding the client's custody, ICE does not contact me before putting my clients in the very vulnerable position of being forced to sign or not be released. The only time I was given access was when my client had the wherewithal to refuse to sign an order in my absence. My opposing counsel from the Office of Immigration Litigation intervened with ICE on my behalf, agreeing that ICE should not be speaking to my client without me present.

ATTORNEY #8

The following is based on an email and follow-up phone conversation with an attorney in Manassas, Virginia:

Earlier this year, I was contacted by a woman who was arrested in a home raid conducted by the Fairfax ICE office. The arresting officers told her they were going to deport her immediately and there was no point in calling a lawyer because a lawyer could not help her. In truth, after securing my services, the woman was released on her own recognizance, obtained a stay of removal, and is now scheduled for an adjustment-of-status hearing this fall based on her existing marriage to a U.S. citizen. Had the woman not contacted me, she would have likely been summarily removed and remained subject to the ten-year bar on admissibility.

ATTORNEY #9

The following is an excerpt from an email submitted by an attorney in Dallas, Texas:

I've worked as an immigration attorney for more than 15 years, and have seen my clients subjected to numerous restrictions on access to counsel. At the ICE district office in Dallas, I have been prohibited from meeting with clients and from being present while the clients were being questioned following arrest. On one occasion, after ICE refused to let me stay with my client during questioning, I asked to speak with a supervisor. After waiting two hours for a response, I was informed that while I was waiting, my client had been transferred to ICE's detention facility in Haskell, Texas, which is nearly 200 miles away.

